IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 10266 of 2004

Between:

S.Nagarajan S/o K.P.Subramanyam, occ:Assistant
Executive Engineer (Electrical) TTD.Triupathi, Chittoor District
R/o.H.No.8, B-Type Quarters, Vinayak nagar , Triupati, Chittoor Dist

..... PETITIONER

AND

1. Tirumala Tirupathi Devasthanam rep.by its Executive Officer
   Tirupathi, Chittoor District
2. G.Laxmi Devi, Asst. Executive Engineer officer of Divisional

Engineer Electrical II, TTD, Tirupathi, Chittoor Dist

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to set aside Proc.ROC.No.TL8/1785, Dt. 17/06/2004 as bad, illegal, irrational, arbitrary, discriminatory and unconstitutional and consequently direct the first respondent to promote the petitioner as Deputy Executive Engineer (Electrical) with effect from the date of passing of the departmental test by holding the action of the respondent in promoting the second respondent to the said post on ad-hoc basis without considering petitioner's clam who is senior, and without waiting for the results of the departmental test of the petitioner as bad, illegal, arbitrary, and unconstitutional by issuance of Writ of Mandamus,

Counsel for the Petitioner:MR.P.V.SANJAY KUMAR

Counsel for the Respondent No.1: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.2: Mr. M. SREE RAMULU REDDY

The Court made the following :

ORDER:

Heard the learned counsel appearing for the parties.

Petitioner who is working as an Assistant Executive Engineer (Electrical), in Tirumala Tirupati Devasthanams(for short 'TTD'), Tirupati, Chittoor District, since 1995, questions the proceedings dated 17-6-2004 of the Spl.Grade Dy.Execuitive Officer(Services), TTD, Tirupati as illegal and arbitrary and consequently to direct the 1st respondent to promote him as Dy. Executive Engineer(Elec.) with effect from the date of his passing of the departmental test.

It is stated on behalf of the petitioner that earlier he filed W.P.NO.4550 of 2003 to consider his case for promotion to the post of Deputy Executive Engineer (Electrical) without reference to the qualifying in the departmental accounts test. It is further stated that though this Court granted interim direction initially, but subsequently it was vacated and accordingly the said post was filled up considering the case of the qualified Assistant Executive Engineers.

It is also stated that two posts have fallen vacant to consider the cases of the Assistant Executive Engineers (Electrical) for promotion to the post of the Deputy Executive Engineer (Electrical). The Government issued orders in exercise of its powers under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987(Act No.30 of 1987)-Rules under Sections 35, 106 and 107 read with Section 153 of the Act, in respect of the Tirumala Tirupati Devasthanams, with regard to the services of the employees of the TTD, in G.O.Ms.No.1060, Revenue (Endowments-1), dated 24.10.1989. Those Rules are called as "Tirumala Tirupathi Devasthanam Employees Service Rules, 1989" (for short 'the Rules'). Under Rule 9(II), of the said rules, the service shall consist of the posts under various branches specified in Annexure-1. Under Annexure-I, issued under Rule 9(II) of the said service rules, there are two channels for the appointment of the Dy. Executive Engineer (Elec.). The first channel is by direct recruitment and the second channel is by

promotion from the cadre of the Assistant Executive Engineer(Electrical).

The eligibility criteria for the 'promotion' to the post of Deputy Executive Engineer(Electrical) from the cadre of the Assistant Executive Engineer(Electrical) is as follows:

1. The Assistant Executive Engineers must

possess B.E.Degree(Civil or Mechanical);

2. They must put in service as Assistant Executive Engineer

(Electrical) for a period of not less than five years;

3. …….(not relevant).

4. The Assistant Executive Engineers must have passed the departmental test of accounts test for Executive Officers and P.W.D. Officers.

The main grievance of the petitioner is that without considering his case for promotion, the first respondent promoted the second respondent who is working as Assistant Executive Engineer to the post of Deputy Executive Engineer even though she had not completed the five years service in the cadre of Asst. Executive Engineer as required under Rule 9(ii) of the TTD service rules. Thus, he questions the said proceedings in this Writ Petition.

It is further stated that the second respondent admittedly has not put in service as Assistant Executive Engineer (Electrical) for a period not less than five years as on 17-06-2004, the day on which the second respondent was promoted to the cadre of Deputy Executive Engineer(Electrical) by the DPC. The second respondent was short of three months for five years service in the cadre of Assistant Executive Engineer. Admittedly, the petitioner also not qualified for promotion to the post of Dy. Executive Engineer as he has not passed the departmental accounts test for Executive Officers and P.W.D. Officers as on the date of the said proceedings of the first respondent dated 17-06-2004 by which the second respondent was temporarily promoted to the post of the Deputy Executive Engineer(Electrical).

Learned Counsel appearing for the petitioner submitted that questioning the stipulation for passing the departmental test, to consider his case for

promotion to the post of Deputy Executive Engineer, the petitioner has filed the Writ Petition No.4550 of 2003 and the said Writ Petition is still pending. He further submitted that as on 17-06-2004 both the petitioner as well as the second respondent have not possessed all the requisite qualifications for their promotion to the post of the Deputy Executive Engineer(Elec.) i.e., the second respondent is short of three months for five years service as Assistant Executive Engineer(Electrical), and the petitioner did not pass the required departmental test. He also submitted that the petitioner passed the departmental test on 18-08-2004 and now he is eligible for the said post.

Learned Counsel appearing for the second respondent submitted that the second respondent also completed five years of service in the post of the Assistant Executive Engineer and therefore both of them are entitled to be considered for the promotion post of Deputy Executive Engineer(Electrical).

Learned Counsel appearing for Tirumala Tirupathi Devasthanams submitted that the said promotion given to the second respondent is not a regular promotion, but it is a case of temporary promotion on adhoc basis under Rule 10(a) of A.P. State Subordinate Service Rules.

In reply to the said contention, learned Counsel appearing for the petitioner stated that a perusal of the proceedings dated 17-06-2004 would appear as if the second respondent was temporarily promoted to the cadre of Deputy Executive Engineer(Electrical) on adhoc basis under Rule 10(a) of the said rules, but in the said proceedings it is specifically stated that she is entitled for regularization in the cadre of Deputy Executive Engineer (Electrical) "*from the next date of completion of the required services in the feeder category"* and therefore it cannot be said that it is a temporary promotion. If that is not a temporary promotion, the case of the petitioner will not be considered and under the guise of the temporary promotion, the petitioner will be deprived of his right to get the promotion in accordance with Tirumala Tirupathi Devasthanam Service Rules.

I have gone through the impugned proceedings dated 17-06-2004 carefully from which it is clear that proceedings promoting the second respondent to the post of Dy. Executive Engineer (Elec.) temporarily is on adhoc basis only under Rule 10(a) of the A.P. State Subordinate Service Rules

but it is not a regular promotion under the Tirumala Tirupathi Devasthanam Service Rules. It is made clear that the promotion is purely temporary and is liable to be reversed without prior notice and the same is subject to the result of the Writ Petition filed by the petitioner in W.P.No.4550 of 2003. It is stated by the Counsel for TTD that as there is requirement of a Deputy Executive Engineer (Electrical) and in view of the fact that both petitioner as well as the second respondent were not eligible as on the date of the said proceedings dated 17-06-2004, but the second respondent was temporarily promoted under Rule 10(a) of the A.P. State Subordinate Service Rules as aforesaid. Thus, I find force in the contention of the Counsel appearing for the TTD and I am of the opinion that it is only a temporary promotion under Rule 10(a) of A.P.S.S.S. Rules.

As the second respondent was promoted temporarily on adhoc basis, it cannot be assumed and presumed that the said promotion is under the Tirumala Tirupathi Devasthanams Service Rules issued in G.O.Ms.No.1060 Revenue(Endowments) Department, dated 24-10-1989. Therefore, I do not see any illegality or irregularity in promoting the second respondent temporarily on adhoc basis to the post of the Deputy Executive Engineer (Electrical) under Rule 10(a) of A.P.S.S.S. Rules, but the question of regularization of the second respondent in the cadre of Deputy Executive Engineer(Electrical) from the next date of completion of the required service in the feeder cadre does not arise and as such that portion of the proceedings dated 17-06-2004 is liable to be set aside.

Accordingly, the Writ Petition is disposed of by setting aside a portion in the impugned proceedings dt.17-06-2004 to the extent indicated above, directing the first respondent to take up the regular exercise of considering the eligible persons working in the cadre of the Assistant Executive Engineer (Electrical) for promotion, under the Tirumala Tirupathi Devasthanams Service Rules, to the post of the Deputy Executive Engineer within four months from the date of disposal of pending Writ Petition No.4550 of 2003. No order as to costs.

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V. Eswaraiah, J.

Dt: 23..09..2004.

Rns/Kvrk.

To

1. The Executive Officer, Tirumala Tirupathi Devasthanam,
   Tirupathi, Chittoor District

2. Two CD copies.

HON'BLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION NO. 10266 OF 2004

DATED: 23-09-2004